RALON BANAS

v.

PP

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
DENIS ONG JCA
[CRIMINAL APPEAL NO: S-05-87-1998]
15 MAY 2000

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - 15 years' imprisonment for culpable homicide not amounting to murder - Whether excessive - Whether judge considered all relevant factors - Penal Code, s. 304 (1st limb)*

The appellant, a police sergeant, was convicted on a reduced charge of culpable homicide not amounting to murder under the 1st limb of s. 304 of the Penal Code and was sentenced to 15 years' imprisonment. This was his appeal against sentence.

Held:
Per Shaik Daud Ismail JCA

[1] The killing committed by the appellant was senseless, vicious and cruel. The learned judge had considered this and all the other relevant factors including provocation, the appellant's long and clean record of service as well as public interest. There was therefore no reason to interfere with the sentence imposed.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu, seorang sarjan polis, disabitkan bersalah atas tuduhan terkurang iaitu homisid salah tidak bermaksud bunuh di bawah rangkap pertama s. 304 Kanun Keseksaan dan dihukum penjara selama 15 tahun. Ini adalah rayuannya terhadap hukuman tersebut.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Pembunuhan yang dilakukan oleh perayu adalah sia-sia, kejam dan tidak berperikemanusiaan. Hakim bijaksana telah mempertimbangkan hal ini bersama-sama faktor-faktor relevan yang lain, termasuk hal bangkitan marah, rekod perkhidmatan perayu yang panjang dan bersih serta isu kepentingan awam. Maka, tidak terdapat apa-apa sebab untuk mengganggu hukuman yang dikenakan.

[Rayuan ditolak.]

Legislation referred to:
Penal Code, ss. 302, 304

For the appellant - VK Liew; M/s VK Liew & Co
For the respondent - Zauyah Be Loth Khan DPP

Reported by Gan Peng Chiang

JUDGMENT

Shaik Daud Ismail JCA:

This is an appeal against the sentence imposed by the Kota Kinabalu High Court upon a conviction for an offence under s. 304 of the Penal Code. The appellant was originally charged for an offence of murder under s. 302 of the Penal Code.

At the conclusion of a month long trial, the learned judge rejected the plea of self defence put forward by the appellant but found that on the evidence adduced both for the prosecution and the defence, there were sufficient evidence to bring the case within limb 1 to s. 304 of the Penal Code. Accordingly the learned judge reduced the charge from s. 302 to s. 304 (1st limb) and convicted the appellant on the reduced charge. After hearing the appellant's plea in mitigation through his counsel and a submission by the learned Deputy Public Prosecutor, the learned judge imposed a sentence of 15 years to take effect from the appellant's date of arrest. Against this sentence, the appellant now appeals.

It is the submission of learned counsel for the appellant that in the light of the evidence and the plea of mitigation put forward by the appellant, the sentence of 15 years is excessive.

The brief facts leading to the incident are that the appellant is a sergeant in the police force, having joined the force on 18 October 1963. At the time of the incident he was the assistant investigation officer in the Criminal Investigation Department, stationed in Keningau, Sabah. Evidence shows that the appellant and the deceased had a small argument when the deceased accidentally broke the spectacle belonging to the appellant. The sole eye witness to the incident which caused the deceased's death, was his mother. She testified that on the night of the incident, she saw the appellant and the deceased near her house arguing. She said the appellant came up to her and showed a wound on his right hand saying that the deceased had injured his hand. He said he was a policeman and that he would shoot the deceased. She noticed the appellant's right hand was bleeding, but he was holding a gun in that hand. She saw that her son, the deceased, was behaving as if he was drunk, as he was leaning on her. She also testified that, she knelt down and pleaded with the appellant not to shoot her son but the appellant kept saying "tembak mati". She continued pleading but the appellant fired one shot towards the deceased. She continued to plead with the appellant but the appellant asked her to keep quiet. Then the appellant fired three more shots whereupon she saw her son fell to the ground. She ran to her son but saw he was not moving or breathing and she shouted for help but the appellant just stood there and threatened to shoot at her if she did not keep quiet. Evidence showed that the appellant fired five shots but three were fatal with one penetrating the heart.

We found that the killing was a senseless one especially when it originated from a minor quarrel over a pair of broken spectacles. We also found the killing was vicious and cruel. The learned judge took into account all factors including the fact that the appellant has had a clean and long service record in the police force. It was the contention of the learned counsel for the appellant that there was some provocation by the deceased since the appellant was wounded by him on the right hand. Medical evidence showed that the wound was a superficial one and in any case, in spite of the wound he was able to hold the gun in his right hand when he fired the shots.

We found no reason to interfere with the finding of the learned trial judge as he had considered all factors including that of public interest. We had dismissed the appeal and confirmed the sentence imposed.